IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-930

MICHAEL BENSON, JUNE TRACY, EDDIE BROWN and LINDA HUBBARD,
*Petitioners,*

vs.

JOSEPH RICH, JACK JOHNSON, CHRIS DiGREGORIO, EDWARD S. ("IKE") MERRY, and RICHARD KAUZLARIC,
*Respondents.*

## MEMORANDUM OPPOSING CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOYCE BLALOCK
Legal Advisor
New Mexico State Police
Post Office Box 1628
Santa Fe, New Mexico 87501

and

ROBERT G. McCORKLE
RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
Post Office Box 1888
Albuquerque, New Mexico 87103
*Attorneys for Respondents*

E. L. MERSEREAU, INC., 330 Chestnut Street, Kansas City, Mo. 64106, [illegible]

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

---

**No: 71-930**

---

MICHAEL BENSON, JUNE TRACY, EDDIE BROWN and LINDA HUBBARD,
*Petitioners,*

vs.

JOSEPH RICH, JACK JOHNSON, CHRIS DiGREGORIO, EDWARD S. ("IKE") MERRY, and RICHARD KAUZLARIC,
*Respondents.*

---

## MEMORANDUM OPPOSING CERTIORARI

Petitioners contend that Respondent Jack Johnson, a New Mexico State Police Officer, along with the other Respondents, violated their civil rights when Petitioners were prevented from handing out leaflets at the 1969 Inter-Tribal Indian Ceremonial in Gallup, New Mexico. The case was tried non-jury before the Honorable Ewing T. Kerr, who made unchallenged findings of fact and conclusions of law and entered Judgment for Respondent Jack Johnson, set forth in Appendix A.

For purposes of this Court's consideration of the case, it is uncontested that Respondent Johnson acted in good faith and on the instructions of the District Attorney (Findings of Fact Nos. 42, 46, and 50). Such good faith

is a legally sufficient defense which would bar any liability for monetary damages against Respondent Jack Johnson, even if Petitioners' First Amendment rights were violated. *Pierson* v. *Ray*, 386 U.S. 547 (1967); *Anderson* v. *Nosser*, 438 F.2d 183, 195 (5th Cir. 1971).

Further, the Petitioners failed to prove any damages at the trial on the merits (Finding of Fact 55). A violation of civil rights does not result in damages without proof supporting damages, which Petitioners failed to establish in this case. *Joseph* v. *Rowlen*, 425 F.2d 1010 (7th Cir. 1970). If this Court should grant certiorari and accept Petitioners' First Amendment claims, Petitioners would still not be entitled to monetary damages, and this Court would be required to affirm the Judgment and Appellate opinion below in favor of Respondent Jack Johnson.

Therefore, the Petition for Writ of Certiorari as to Respondent Jack Johnson should be denied.

Respectfully submitted,

JOYCE BLALOCK
Legal Advisor
New Mexico State Police
Post Office Box 1628
Santa Fe, New Mexico 87501

and

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
Post Office Box 1888
Albuquerque, New Mexico 87103

By .....
ROBERT G. MCCORKLE